



BLACK EDUCATION NETWORK, INC.

1165 Allgood Road, Suite 13, Marietta, GA 30062

Tel: (770) 971-2607 Fax: (770) 226-9237

Michele Clark Jenkins
President/CEO

Board of Directors

Stephen E. Davis
Chairman

Michele Clark Jenkins
Vice Chair

Regina A. Illery
Secretary

Linda D. Bernard
Dr. James E. Lyons, Sr.
Hon. Chris Owens

VIA ELECTRONIC FILING

January 28, 2004

The Honorable Michael K. Powell
The portals
445 12th Street, SW
Federal Communications Commission
Washington, D.C. 20554

Dear Chairman Powell:

Re: Ex Parte Submission
CS Docket No. 98-120

Black Education Network, Inc. (BEN) is a minority owned company which creates, produces and distributes programming from the Black perspective that is intelligent and informative, as well as entertaining. By this letter, BEN expresses its strong support for full digital multicast must-carry.

Multicasting provides an unprecedented opportunity for the Commission both to increase access to the public airwaves for minority and other underrepresented groups and to expand the diversity of programming choices available to all viewers. Requiring cable operators to carry broadcasters' full over-the-air signal, including multicast program streams, would help make this opportunity a reality while simultaneously ensuring a successful DTV transition and strengthening over-the-air broadcaster' ability to thrive in the post-DTV world. The price of these benefits would be minimal, as multicast must-carry in most cases would not require more spectrum than cable operators currently dedicate to analog must-carry. With every advancing break through in compression technology, the amount o requisite spectrum will continue to decrease. Given the extensive list of benefits and the minimal countervailing costs, the Commission should order multicast must-carry without delay.

Very early on in the process of developing content for distribution, we realized that distribution was not easily obtained. There is an attitude among cable operators that there is only a need for one channel that is culturally relevant to African-Americans and only then in predominantly urban cable systems. We have also experienced cable operators demanding to air programming new entrants on substantially less favorable terms then with long existing programming services. Additionally, even when there is a programming access agreement in place with cable operators, little if any minority offered programming is actually aired on their systems. We have experienced on even a greater basis, a concerted effort to

***Finally...
Television
from
Our
Perspective***

bar minority entry not only from programming opportunities, but also from cable ownership opportunities.

As the Commission is aware, multicasting offers the opportunity to multiply has as much as six times the amount of airtime available for over-the-air broadcast programming. This vast expansion in available airtime will eliminate what we see as the major impediment to programmers' ability to reach minority and other non-mass-market viewers. There is presently no over-the-air-broadcast network devoted to the African-American community. Cable programmers and satellite operators provide programming services such as BET and TV One, but these services are national, not local, in focus and they are available only to cable subscribers (and generally only to those that subscribe to a cable system's more expensive digital tier. Multicasting would instead provide viewers with free over-the-air programming that is both minority-oriented and local in nature—a combination that currently is available in only a few places in the country, if at all.

Moreover, the Commission has recognized that the best way to ensure that diverse content reaches viewers is by promoting competition among video delivery platforms. Multicasting will enable each broadcaster to provide viewers with multiple free over-the-air channels that will increase competition among broadcast stations as well as enhancing competition between broadcast networks and cable and satellite providers. Equally important, multicast must carry will promote competition by providing broadcasters with additional revenue streams, thereby strengthening the financial health of the over-the-air broadcasting system and permitting it to continue bringing quality service to viewers in a world that increasingly depends primarily upon cable for video programming. By providing broadcasters with this opportunity to compete, the Commission will ensure that all players in the video delivery market, including minority-oriented programming like us, will "compete fiercely for consumers' diverse demands for programming." Minorities and other traditionally underserved audiences cannot help but benefit from this increased competition.

The alternative to multicast must-carry will likely be the extinguishment of even the minimal broadcast services these audiences currently receive. To small and minority-owned broadcasters and programmers, alike, multicasting may be a necessity, not an option. Minority-owned stations are among those that have been and will continue to be most burdened by the ongoing DTV transition. As the transition appears likely to stretch out beyond the 2006 target date, they are facing the prospect of the indefinite expense of dual analog and digital operations on top of the massive sums already expended in building out DTV facilities. In the worst case scenario, at least some of these stations are likely to be forced to sell out to larger station groups capable of utilizing economies of scale to meet these financial challenges. Such conglomerates are unlikely to air significant amounts of minority-themed programming. Alternatively, the Commission, by facilitating multicasting, could help these stations meet these challenges on our

own. In the end, ordering multicast must-carry will promote content diversity and help ensure continued ownership diversity, the promotion of which the Commission has recognized as a foundation of its broadcast policies. In addition to preserving ownership diversity among television broadcasters, multicast must-carry also will promote diversity among program producers as new programmers will begin to compete to fill the vast new quantities of airtime.

All these benefits will come essentially without cost because full digital multicast must carry will impose little, if any, increased burden on cable operators' bandwidth. Compression technology has progressed to the point that cable operators can now carry six multicast program streams or a mix of multicast and HDTV program streams on no more bandwidth than currently is devoted to carrying a single analog broadcast channel. Consequently, contrary to claims by cable operators and programmers, viewers are unlikely to lose any cable program services as a result of full digital multicast must carry. More to the point of encouraging minority access to all communications media, multicast must-carry will not threaten continued cable carriage of the few national minority programming outlets that currently exist such as BET and MBC. This rare opportunity to expand minority programming should not be squandered simply because of baseless concerns, which are belied by technological developments that this overall expansion of access to the public airwaves might diminish the speech opportunities of cable operators or programmers.

The Commission still must address many DTV-related issues before the transition will be complete, including the public interest responsibilities of DTV broadcasters. Although we wholeheartedly endorse the adoption of such public interest requirements, we believe it would be a serious mistake for the FCC to let these issues divert it from promptly resolving the multicast must-carry issue. The magnitude of the threat to over-the-air television posed by an indefinite DTV transition is simply too great to delay multicast must-carry until these issues are resolved. Likewise, the opportunities for minority programmers are too great to delay any longer. If the Commission does delay multicasting until resolution of digital stations' public interest responsibilities, it may be left with a significantly smaller number of independent minority-owned stations to which those standards will apply. Moreover, we think the Commission will be in a better position to delineate optimally effective public interest obligations once it has defined the parameters of the multicasting platform on which they will be delivered. In addition, we think the FCC's adoption of public interest obligations will be informed by the evidence and material the Commission is collecting through its current localism initiative and hearings.

Just a few weeks ago, the Commission appeared to be poised to order operators to carry the entirety of every local broadcaster's DTV signal opening up vast new opportunities for minority programmers like us. Now it appears that the Commission will further delay resolution of this issue, that has been pending for

over five years. We implore the Commission to wait no longer; multicast must-carry should be ordered as soon as possible.

Sincerely,

Michele Clark

Jenkins

Michele Clark Jenkins
President
Black Education Network

Cc: The Honorable Kathleen Q. Abernathy
The Honorable Michael J. Copps
The Honorable Kevin J. Martin
The Honorable Jonathan S. Adelstein